IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

SUMMONS FOR JUDGMENT NO.402 OF 2004
IN
SUMMARY SUIT NO.1028 OF 2004

Reuters India Pvt.Ltd. ....Plaintiff
V/s.
Pannalal Mahesh Chandra Jewellers ....Defendants

Mrs.V.Gupte with Ms.Dholkia i/b M/s.Dholkia Gupte & Co. for the Plaintiff.
Mr.M.G. Mimani for the Defendants.

CORAM : S.J. VAZIFDAR, J.
DATED : 25TH AUGUST, 2005.

P.C. :

1. The suit is filed to recover an amount of Rs.3,49,794.03 in respect of the services provided by the Plaintiff to the Defendants under a written agreement dated 12th June, 2000 (Exhibit "A" to the plaint). Clauses 2.1 and 2.2 of the agreement read as under :-

> "2.1 The Agreement will take effect from the date of signature of the Contract by both you and us and will continue for as long as you receive Services.
>
> 2.2 Subject to clauses 2.3 and 2.4 either of us may cancel any Service or any access to a Service by giving prior written notice to the other of not less than

(a) 3 months in the case of Reuters Business Information Products'

(b) 6 months in the case of the Reuters Shipping Service, and other Services when indicated in the Order Form ; and

(c) 6 months in the case of all other Services."

. In the present case, clause 2.2 (b) is applicable.

2. Clauses 3.2 and 4.7 of the agreement read as under :-

"3.2 We will endeavour to provide reasonable notice of any change to such related charges, but you agree that there may change without notice if a change is imposed on us by any third party.

4.7 If

(a) you cancel any Service or any access to a Service other than when permitted by the Agreement ; or

(b) You are in breach of any payment obligation under the Agreement entitling us to terminate the Agreement,

we will be entitled to recover from you as liquidated damages an amount equal to 75% of the relevant Service Fees which would have been payable until the end of the applicable notice period in clause 2. We both agree that this constitutes a realistic pre-estimate of our loss

and is not intended to be a penalty."

3. Pursuant to the agreement, an order form was also executed between the parties. This order form forms an integral part of the agreement. The order form specifies unit price per month and total price.

4. Pursuant to the agreement including the order form, services were offered by the Plaintiff to the Defendants. About that there is no dispute. The Plaintiff has in accordance with the terms and conditions of the agreement and in particular clause 3.3 thereof raised its invoice and delivered the same to the Defendants from time to time. This fact too is admitted by the Defendants.

5. The Plaintiff by a letter dated 14th November, 2000 informed the Defendants that with effect from 1.1.2001, there would be an increase in price. By a letter dated 19.12.2002, the Defendants intimated that they were unable to bear the higher costs and requested the Plaintiff to reduce the price. The Defendants stated that in case the Plaintiff was unable to reduce the charges, they would not be able to continue. It is important to note that the Defendants did not terminate the services. The

Defendants in fact consciously continued to avail the services.

6. The Plaintiff did not accede to the request to reduce the charges. By a letter dated 9th March, 2001, the Defendants stated that if the Plaintiff was not willing to reconsider the reduction in price, it would have no option but to forgo the contract. The contract however was not terminated even at this stage. By a letter dated 13th March, 2001, the Plaintiff again refused to reduce the price.

7. It is important to note that by a fax message dated 12th June, 2001 the Defendants complained about the technical error in installation and requested the Plaintiff to look into and do the needful in the matter at the earliest. This is a clear indication that the Defendants never terminated the contract in the past. Further admittedly, the Defendants availed of the services pursuant the aforesaid agreement.

. It is only by a letter dated 21st July, 2001, that the Defendants called upon the Plaintiff to discontinue the installation immediately.

8. Two defences have been raised before me.

Firstly it was contended that the Defendants had terminated the agreement by the letter dated 19.12.2000 itself. This is bellied by what I have stated earlier and in particular the fax message dated 12th June, 2001 which establishes beyond doubt that the contract was kept alive by the Defendants and the Defendants had even availed of the services of the Plaintiff.

9. The next defence is based on clause 4.7. It is contended on behalf of the Defendants that during the notice period an amount of only 75% is chargeable by the Plaintiff and that too as liquidated damages. This does give rise to the question of interpretation of the agreement regarding the amount that the Plaintiff is entitled to charge. However during the notice period also the services were actually terminated.

. Even assuming this is to be so, at the highest a triable issue is raised only in respect of the service charges for a period 21st June, 2001 to 9th September, 2001 which amounts to Rs.55,284/-. The mere fact that the Plaintiff as a matter of indulgence may have considered the termination to be as of 9th March, 2001 does not entitle the Defendants to claim

that in fact the termination took place on 21st July, 2001. There is no defence whatsoever regarding the balance claim.

10. The Plaintiff has filed a compilation of the original documents. The same is taken on record and marked Exhibit "A" collectively.

11. In the circumstances, the Summons for Judgment is made absolute and the suit is decreed in the sum of Rs.2,94,510.03 together with interest thereon at the rate of 9% p.a. from the date of filing of the suit till payment and/or realization.

12. The Defendants are granted unconditional leave to defend the suit regarding the balance amount claimed in the suit. The suit is transferred to the list of commercial causes as far as the balance amount is concerned. The Defendants to file their written statement within four weeks from today regarding the balance amount is concerned. Discovery and Inspection to be completed within six weeks thereafter.

. Summons for Judgment stands disposed of accordingly.